

N o t i c e

of negotiated procedure with publication

Call for applications to participate in a negotiated procedure with publication

Public Tender

“Provision of legal services to the State in international investment arbitration proceedings brought against the Czech Republic by investors in photovoltaic power plants”

Identification of the contracting authority: Czech Republic – Ministry of Finance
Letenská 15
P.O.BOX 77
118 10 Prague 1
Reg.No: 00006947
Person authorised to act on behalf of the contracting authority:
JUDr. Ing. Jiří Nováček,
Director of Section – Cabinet and Administration

.....
Signature:

Bank contact: ČNB, Praha 1, account no. 3328-001/0710

Preamble

This above-threshold public service contract is awarded in accordance with Section 22 paragraphs 3 and 5 and Section 29 et seq. of Act No. 137/2006 Coll., on public procurement, as amended (hereinafter referred to as the “Act”) in a negotiated procedure with publication.

Notice of interim information was published in the Public Procurement Journal on 25 March 2014 under form registration number 7401010084102 and contract registration number 484102.

Notice of the contract was sent to the Public Procurement Journal on 3 June 2014 and published on 6.6.2014 under form registration number 7402012084102 and contract registration number 484102.

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Part A.

Information for candidates wishing to participate in the negotiated procedure with publication

1. Subject-matter of the public service contract:	Legal services consisting in representing the Czech Republic in international arbitration proceedings brought against the Czech Republic by foreign investors in photovoltaic power plants and in related proceedings. CPV: 79100000-5 Legal services
2. Place of performance:	The Czech Republic, and at the locations where hearings are held for the arbitration and related proceedings.
3. Period of performance:	From signature of the contract to provide legal services for an indefinite period to the amicable termination of the action, through the award of a final and binding decision or until some other final settlement of the dispute or until the completion of related and consequential proceedings (proceedings for the recognition and enforcement of conclusive findings, execution proceedings).
4. Requirements for the form and content of the request to participate:	<p>The request to participate shall be submitted in a sealed envelope clearly marked on the front with the words “Negotiated procedure with publication – Legal Services – DO NOT OPEN – SO 9001/T”.</p> <p>The envelope shall bear the company name or the name of the candidate and the address of the registered office.</p> <p>All documents shall be submitted in written form, in an original and one copy and must be prepared and submitted in Czech or English. If a request to participate is submitted by a contractor with a registered office outside the territory of the Czech Republic, and the documentation is in a language other than Czech or English, the documentation must be submitted in the original language with an official translation into Czech.</p> <p>The individual pages of the request to participate, including attachments, shall be properly numbered in ascending numerical order, sorted according to the instructions for preparing requests to participate (provided in part C of this Notice) and bound together in a manner that prevents any tampering.</p> <p>The cover sheet of the request to participate must be signed by a person authorised to act in the name of or on behalf of the candidate. A sample of a cover sheet is provided in part D of this Notice.</p> <p>Candidates wishing to participate in the negotiated procedure with publication shall not be entitled to any reimbursement of costs incurred in preparing the request to participate in this negotiated procedure with publication.</p>
5. Commercial terms and conditions, including payment terms:	<p>A contract to provide legal services for an indefinite period will be concluded with the contractor whose tender is selected as the most suitable, in accordance with Act No. 85/1996 Coll., on the legal profession, as amended, and Act No. 513/1991 Coll., the Commercial Code, as amended. Commercial terms and conditions, including payment terms, will be included in the draft contract to provide legal services. The draft contract will be attached to the call for tenders.</p> <p>For information, the draft contract is provided in part F of this Notice.</p> <p>The contracting authority reserves the right to amend the draft contract.</p>

<p>6. Place and deadline for submission of the request:</p>	<p>The request to participate in the negotiated procedure with publication and the required documents providing compliance with the eligibility conditions shall be delivered by registered mail or delivered in person to the Registry of the contracting authority: Czech Republic – Ministry of Finance Letenská 15 P.O.BOX 77 118 10 Prague 1 at the latest by 11 July 2014 to 10:00 a.m.</p>
<p>7. Requirement to limit the scope of performance by a sub-contractor: (pursuant to Section 44 paragraph. 6 of the Act)</p>	<p>In accordance with the provisions of Section 44 paragraph 6 of the Act, the contracting authority requires that all of the main activities arising from the nature of the subject-matter of the public contract are performed exclusively by the contractor and that they may therefore not be performed through a sub-contractor. Specifically, this concerns a principle in international law that the sub-contractor may not perform the following: (i) actual litigation, including representation during oral proceedings before the arbitral tribunal and, if applicable, the Court of Appeal, (ii) related communications with the Tribunal (Court of Appeal), in particular the drafting of petitions and responses to petitions submitted by the counterparty. This applies for the entire duration of the dispute until a final amicable settlement or a final decision or some other final settlement, including any enforcement proceedings.</p> <p>Any ancillary activities relating to the performance of the subject-matter of this public contract may be performed by a sub-contractor, including, for example: interpreting and translation services, the procurement of materials, technical and organisational support for the dispute, and also, within the area of Czech law, supporting legal analysis, research, analysis, information memoranda, the retrieval and analysis of relevant case law and expert commentaries, interpretation of legal norms or expert opinions.</p> <p>Please note that this list of activities is only indicative and represents an overview of normal tasks relating to the performance of the subject-matter of the public contract.</p> <p>If the contracting authority shall perform a public contract or demonstrate that part of the eligibility conditions are fulfilled by a sub-contractor (or both), it shall list the identification data for the sub-contractor in the cover sheet for the request to participate and submit a contract concluded with the sub-contractor showing the obligation of the sub-contractor to provide the performance intended for the performance of the public contract by the contractor. The contract shall include a specific description of the activities to be performed by the sub-contractor in compliance with the terms and conditions of the public contract. In the event part of the qualifications are shown to be fulfilled by the sub-contractor, the contract shall exactly describe the qualifications that are demonstrably fulfilled by the sub-contractor. The sub-contractor shall demonstrate the fulfilment of qualifications in accordance with Section 51 paragraph 4 of the Act. The contracting authority may not demonstrate fulfilment of qualification requirements by the sub-contractor beyond the scope of performance of the public contract by the sub-contractor.</p>

	<p><i>Pursuant to Section 50 paragraph 3 of the Act, the contracting authority shall only set out the scope of the qualifications required in information and documentation directly related to the subject-matter of the public contract.</i></p>
<p>8. Other information:</p>	<p>Candidates who will be invited to submit a tender, shall:</p> <ul style="list-style-type: none"> a) demonstrate, in the form of a sworn statement, that their representation of the Czech Republic will not result in a conflict of interests between the contractor (i.e. the candidate, individual candidates in a joint tender, the sub-contractor) and the claimant, or the Czech Republic. b) demonstrate, in the form of a sworn statement, that the contracting authority did not withdraw from the contract to provide legal services with the contractor for failure to properly perform its obligations or the obligations arising from this contract. c) demonstrate, in the form of a sworn statement, that the lawyer who demonstrates the qualification requirements pursuant to the Qualification Documentation (part B division 2 (f)), will be the same as the lawyer pursuant to Article 2.2 to 2.4 of the draft contract, and will be available in Prague if needed for the duration of the proceedings, to ensure that he/she personally performs the tasks laid down in Article 2.4 of the draft contract. This lawyer shall be responsible for the provision of the legal services referred to above (hereinafter referred to as the “person responsible for providing the services”). d) <u>submit</u> confirmation from the Czech Bar Association (not more than 30 days from the submission of tenders) that the contractor (or statutory body – associate) and the person responsible for providing the services have not faced disciplinary proceedings. e) <u>submit</u> evidence that a security deposit amounting to CZK 1,800,000 has been made. The various forms of providing security will be set out in the call for tenders. f) submit evidence of valid insurance covering liability for third-party damage caused by the candidate with the amount of the indemnity being at least CZK 100 million, or, if no insurance contract has been concluded, <u>submit a sworn statement that in the event the candidate is selected, they will submit a valid insurance contract for the required scope of insurance on the day of signature of the contract.</u> g) <u>submit</u> a list of statutory bodies or members of statutory bodies, who have been either employed by, or have been in an executive or similar relationship with, the contracting authority during the past three years from the end of the deadline to submit tenders. h) if the contractor is a joint-stock company, <u>submit</u> a list of those holding shares with an aggregate nominal value in excess of 10% of registered capital, completed within the deadline for submission of tenders.

	<p>i) <u>submit</u> a declaration that it has not concluded and will not conclude an agreement prohibited under Act No 143/2001 Coll., on the protection of competition, as amended (Act on Protection of Competition), as amended, in connection with the public procurement process.</p> <p>The contracting authority shall prepare a written call for tenders in accordance with Section 29 paragraph 4 of the Act.</p>
9. Communication:	All communication between the contracting authority and the contractor shall take place in Czech or in English.
10. Additional information	<p>The contractor is entitled to request additional information from the contracting authority.</p> <p>Contact details: Ministry of Finance, Letenská 15, 118 10 Prague 1, officer in charge: Jitka Thámová, e-mail: jitka.thamova@mfcz.cz.</p> <p>Additional information on the tender conditions will be published regularly on the website – www.mfcz.cz (O ministerstvu→Hospodaření resortu→Veřejné zakázky→2014) and on the profile of the contracting authority.</p>
11. Rights of the contracting authority:	The contracting authority shall set aside, or may set aside, the award procedure under the conditions laid down for a negotiated procedure with publication in Section 84 of the Act.

Part B.

Qualification Documentation

A contractor who fulfils the basic qualification prerequisites set out in Section 53 of the Act, the professional qualification prerequisites set out in Section 54 of the Act, submits a sworn statement of its economic and financial capacity and fulfils the technical qualification prerequisites set out in Section 56 of the Act is qualified to perform a public contract.

<p>1. Basic and professional qualification prerequisites:</p>	<p>Candidates interested in participating in the negotiated procedure with publication shall demonstrate fulfilment of the basic qualification prerequisites within the scope laid down in Section 53 of the Act and fulfilment of the professional qualification prerequisites in accordance with Section 54 (a) and (c) of the Act.</p> <p>Candidates shall submit copies of documentation evidencing compliance with qualifications.</p> <p>Documentation evidencing fulfilment of the basic qualification prerequisites and the extract from the Commercial Register shall not be more than 90 days old as of the date of submission of the request to participate.</p> <p>If several candidates submit a joint request to participate in the negotiated procedure with publication, each of them is required to demonstrate full compliance with the basic qualification prerequisites pursuant to Section 50 paragraph 1 (a) of the Act and the professional qualification prerequisites pursuant to Section 54 (a) of the Act. Each candidate must jointly demonstrate fulfilment of qualifications pursuant to Section 50 paragraph 1 (b) and (d) of the Act.</p> <p>If several candidates submit a joint request to participate, they are required to submit, together with the documentation evidencing fulfilment of the qualification prerequisites, an agreement containing a commitment that all these candidates will be jointly and severally liable to the contracting authority and to third parties for all obligations arising in connection with the performance of the subject-matter of the public contract, for the entire period of performance and for the duration of other obligations arising from the public contract.</p> <p><u>Foreign economic operators</u> applying to participate in the negotiated procedure with publication shall demonstrate compliance with qualification requirements in accordance with the applicable legislation in the country where their registered office, place of business or residence is located, within the scope required by the law and the contracting authority. Documentation evidencing fulfilment of qualifications shall be submitted by foreign economic operators in their original language and accompanied by a certified translation into Czech or English. In the event that part of the qualification is demonstrated by a sworn statement, the sworn statement shall be signed by a person authorised to act in the name of or on behalf of the contractor, in accordance with Section 51 paragraph 7 of the Act.</p>
<p>2. Technical qualification prerequisites:</p>	<p>a) Candidates shall demonstrate a knowledge of international investment law by listing at least two cases in which, as the main contractor, they represented a client in arbitration proceedings before an international arbitration tribunal in disputes relating to investment promotion and protection agreements or under the</p>

Energy Charter Treaty, i.e. where, as the main contractor, they personally participated in the processing and preparation of submissions for the client and represented the client in hearings before the arbitration tribunal.

Candidates shall only list completed cases, in which, during the past three years, a final arbitration award was rendered by an international arbitration tribunal or other international arbitration body or court, or the dispute was otherwise finally concluded (e.g. by settlement).

Candidates shall provide all the information listed below for the individual cases in a table: date of commencement and termination of the case (i.e. day, month and year), the identities of the Parties, the subject of the dispute, the arbitration body, also, which party to the dispute was represented by the candidate, how the dispute was terminated, whether it was a dispute under an investment promotion and protection agreement or a dispute under the Energy Charter Treaty, the name and surname of the lawyer or lawyers who represented the client in the given arbitration proceedings. Candidates are not required to identify the Parties to the dispute if this would breach their confidentiality obligations. Cases that do not list all the information requested above will not be considered during the evaluation. The format of the table to demonstrate the technical qualification prerequisites is provided in part G.

- b) Candidates shall submit a certificate of education (university law degree) and professional qualifications of the persons who will be responsible for providing the services.
- c) Candidates shall demonstrate knowledge of foreign languages – fluency in English (e.g. by demonstrating their participation in international arbitration proceedings held in a foreign language, a Grade 3 language examination).
- d) Candidates must be able to provide translation of documents into the foreign language or languages in which or from which the proceedings are held.

If the candidates provide translations through a sub-contractor, the procedure for demonstrating fulfilment of this part of the qualification shall be followed, pursuant to Section 51 paragraph 4 of the Act.

- e) Candidates shall demonstrate that they have an office in at least three states that are Parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in 1958 in New York. These law firms must be part of a network of law firms owned by the candidate, which use the same name or company name to identify themselves. The sworn statement shall also contain a list of these law firms (i.e. the name and registered office of the law firm in the individual states).
- f) Candidates shall demonstrate that the lawyer proposed by the candidate as the lawyer responsible for providing legal services

pursuant to Articles 2.2 to 2.4 of the draft contract, (i) is a lawyer or associate lawyer of a law firm which is part of the network of law firms operating under the same name, or company name, and which is located in a state that is a Party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in 1958 in New York, and (ii) this lawyer was or is the head of a team of lawyers that represents or, during the past three years, has represented clients in international arbitration proceedings initiated either under an investment promotion and protection agreement or under the Energy Charter Treaty, or on the basis of an arbitration clause, before an international arbitration tribunal located outside the territory of the Czech Republic. Candidates shall provide the name, surname and other identification data concerning the specific lawyer who meets the requirements of this criterion.

Technical qualifications prerequisites shall be demonstrated in the request to participate as follows:

In accordance with sub-paragraph (a) a table shall be submitted – a specimen is provided in part G of this Notice. Pursuant to Section 56 paragraph 2 (a) paragraphs 1 to 3 of the Act, which shall contain, as an integral part:

1. a certificate issued by a contracting authority, if the services were provided to the contracting authority, or
2. a certificate issued by another person, if the services were provided to a person other than the contracting authority, or
3. a contract with another person and a document evidencing completion of performance by the contractor, if it is not possible to obtain a certificate pursuant to item 2 above from such a person for reasons on the part thereof.

The requirements set out in sub-paragraphs (c), (d), (e) and (f) of this paragraph, shall be demonstrated in the request to participate in the form of a sworn statement signed by a person authorised to act in the name of or on behalf of the candidate, specifically, for each of the points under sub-paragraphs (c), (d), (e) and (f).

The sworn statement of compliance with the technical qualifications prerequisites pursuant to sub-paragraph (e) shall contain a list of those law firms that meet the conditions laid down in sub-paragraph (e).

Part C.

Instructions for drafting the request to participate

The contracting authority requires the following elements in each individual request to participate:

1. Cover sheet (pursuant to part D of this Notice),

2. Documentation evidencing fulfilment of the qualifications prerequisites (pursuant to Sections 53, 54 (a) and (c), 50 paragraph 1 (c) of the Act)
 - 2.1. Extract(s) from the Criminal Records (Section 53 paragraph 1 (a) and (b) of the Act),
 - 2.2. Confirmation from the competent Tax Office (Section 53 paragraph 1 (f) of the Act),
 - 2.3. Confirmation from the competent authority or institution (Section 53 paragraph 1 (h) of the Act),
 - 2.4. Extract from the Commercial Register (if the candidate is entered in the Commercial Register),
 - 2.5. Licence to operate a business (Act No. 85/1996 Coll. on the legal profession),
 - 2.6. Sworn statement pursuant to Section 53 paragraph 3 (d) of the Act on the fulfilment of the basic qualification prerequisites and pursuant to Section 50 paragraph 1 (c) of the Act on economic and financial capacity (prepared according to the specimen provided in part E of this Notice).

Documentation evidencing fulfilment of the basic qualification prerequisites and the professional qualification prerequisites may be replaced by an extract from the list of approved economic operators (Section 127 paragraph 1 of the Act).

3. Documentation evidencing fulfilment of the technical qualifications prerequisites:
 - 3.1. Table prepared in accordance with the specimen provided in part G **including certificates or contracts**
 - 3.2. Educational and professional certification for the persons responsible for providing the services (pursuant to part B 2 (b) of this documentation),
 - 3.3. Sworn statement confirming knowledge of foreign languages (pursuant to part B 2 (c) of this documentation),
 - 3.4. Sworn statement on the ability to provide translation services (pursuant to part B 2 (d) - *in the event this is demonstrated through a sub-contractor, including the documents referred to in Section 51 paragraph 4 of the Act,*
 - 3.5. Sworn statement, including a list of law firms (pursuant to part B 2 (e) of this documentation),
 - 3.6. Sworn statement (pursuant to part B 2 (f) of this documentation).

4. Other documentation – for a joint tender, when performance of the public contract is provided by a sub-contractor, when qualification is demonstrated through a sub-contractor.

Part D.

Cover sheet

Request to participate in a negotiated procedure with publication

Public Tender

“Provision of legal services to the State in international investment arbitration proceedings brought against the Czech Republic by investors in photovoltaic power plants”

Contracting authority: Czech Republic – Ministry of Finance, 118 10 Prague 1, Letenská 15,
Ref. No. 00006947

The contractor is:	a legal entity ^{x)}	a natural person ^{x)}
Is this a joint tender (if yes, please extend the table providing identification information on the candidates)	YES ^{x)}	NO ^{x)}

Identification data on the candidate (legal entity):

<i>Business or company name:</i>	
<i>Registered office:</i>	
<i>Legal form:</i>	
<i>Identification number (if one has been assigned):</i>	

Identification data on the candidate (in the case of a natural person):

<i>Business name or name and surname:</i>	
<i>Place of business or place of permanent residence:</i>	
<i>Identification number (if one has been assigned):</i>	

Other information:

<i>Name(s) and surname(s) of member(s) of statutory bodies:</i>	1. 2.
<i>Bank details:</i>	
<i>Contact person:</i>	
<i>Telephone number:</i>	
<i>e-mail address:</i>	

Additional information:

Is a certain part of the qualification fulfilled through a sub-contractor	YES ^{x)}	NO ^{x)}
Will the contract be performed through sub-contractors	YES ^{x)}	NO ^{x)}

Identification data on the sub-contractor:	
<u>Sub-contractor –legal entity^{x)}</u> : Business or company name: Registered office: Legal form: Identification number (if one has been assigned): Percentage of performance:	
<u>Sub-contractor –natural person^{x)}</u> : Business name or name and surname: Place of business or place of permanent residence: Identification number (if one has been assigned): Percentage of performance:	

Note. In the event that part of the public contract, including the demonstration of qualification,

- a) will not be performed through sub-contractors, the table should be deleted
- b) will be performed through more than one sub-contractor, the table should be expanded

I/we submit this request to participate in the negotiated procedure with publication and declare that I/we accept the terms and conditions of the negotiated procedure with publication.

I/we declare that all the information provided in this request to participate is true.

Done inon

.....
 Name and surname of the person authorised to act in the name of/
 on behalf of the economic operator

.....
 Signature

^{x)}Delete where not applicable

Part E.

Sworn Statement

A. Pursuant to Section 53 of Act No. 137/2006 Coll., on public procurement (hereinafter referred to as the “Act”)

Fulfilment of the basic qualification prerequisites

The candidate declares that:

- during the preceding three years it has not accomplished elements of unfair competition practices in the form of bribery under a separate legal regulation (Section 53 paragraph 1 (c) of the Act),
- during the preceding three years it has not been subject to insolvency proceedings involving its assets, in which a declaration of bankruptcy has been issued or an insolvency petition has not been rejected due to lack of assets to cover the costs of insolvency proceedings, or the declaration of bankruptcy has not been set aside because of the total insufficiency of assets or receivership has not been imposed under separate legal regulations (Section 53 paragraph 1 (d) of the Act),
- it is not being wound up (Section 53 paragraph 1 (e) of the Act),
- it has no outstanding tax arrears registered in tax records, both in the Czech Republic and in the country of the registered office, place of business or residence of the economic operator (Section 53 paragraph 1 (f) of the Act),
- it has no outstanding arrears in respect of payments and penalties of public health insurance, both in the Czech Republic and in the country of the registered office, place of business or residence of the economic operator (Section 53 paragraph 1 (g) of the Act),
- during the preceding three years it has not been found guilty for grave professional misconduct or has not been imposed a disciplinary punishment under separate legal regulations, where demonstration of professional qualifications under separate legal regulations is required pursuant to Section 54 (d); when the economic operator pursues such an activity through a person in authority or any other person liable for the activity of an economic operator, this prerequisite shall be applicable to those persons (Section 53 paragraph 1 (i) of the Act),
- it is not enrolled on the black list of economic operators banned from participating in the performance of public contracts (Section 53 paragraph 1 (j) of the Act),
- during the preceding three years it was not fined for allowing the performance of illegal work under a separate legal regulation (Section 53 paragraph 1 (k) of the Act).

B. Pursuant to Section 50 paragraph 1 (c) of the Act

Declaration of economic and financial capacity

The candidate declares that it is economically and financially qualified to perform the public contract.

Done inon

.....
*Name and surname of the person authorised to act in the name of/
on behalf of the economic operator*

.....
Signature